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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES AND BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, *Petitioners*,

v.

ANNA MAE ALLEN, ET AL., *Respondents*.

PETITIONERS' REPLY BRIEF

MILTON KRAMER
LESTER P. SCHOENE

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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This reply is made for the purpose of pointing out some of the inaccurate and misleading statements in the Brief for the Respondents which, if uncorrected and believed, might result in misunderstanding the nature of this case.

Most of respondents' citations for their assertions of purported fact are not to the printed record but to

the record certified to this Court by the court below, some of which they reproduce in an appendix to their brief. This of course is contrary to Rule 26(2) of this Court's rules, which provides that if the respondent does not file a counterdesignation of the record to be printed he shall be deemed to have agreed that the case should be considered on the record designated by the petitioner for printing. Respondents made no counterdesignation. Normally we would have no objection to anybody citing anything he pleases. But when, as here, the respondents distort and misrepresent the nature of the material they are citing, which they could have made but did not make available for distribution in the printed record, the Court may see fit to apply its Rule 26(2).

QUESTION PRESENTED

The question presented, as stated by respondents, is predicated on a false premise, and assumes that they have already prevailed in this Court on the merits and that there remains only the question of a remedy. They say that it has been established that petitioners will subject respondents to compulsion that was adjudged unlawful in *International Association of Machinists* v. *Street*, 367 U.S. 740.

It has not been so established. In the *Street* case this Court held that individual employees who are unwilling union members under a railroad union-shop agreement and who are opposed to particular political or ideological objectives supported by union funds derived from dues and who make such opposition known to the union, would be entitled to limited relief against such expenditure of their funds, such as a return of a portion of their dues or an injunction against such

expenditure of a portion of their dues. In this case none of the respondents is a member of or has paid any money to the petitioners under the union shop, there has been no adjudication that petitioners would so spend any of respondents' dues or other funds should they pay any, there has been no determination that respondents have advised petitioners of anything, and so the entire premise of the respondents' statement of the Question Presented is non-existent.

We submit that even if the Question Presented were as stated by respondents, the answer would be that the remedy granted below is inconsistent with this Court's decision in the *Street* case, for the reasons stated in our Petition.

STATEMENT OF THE CASE

In the last full paragraph on page 3 of their brief the respondents say the evidence contains many pages of exhibits showing "by dates, names, and individual amounts, literally hundreds of thousands of dollars of contributions paid to political candidates whom the higher union officials selected as the recipients of such largess." They say that the lists were too bulky to be included in the printed record and so instead are printed in the appendix to their brief.

It is difficult to avoid the conclusion that this is a deliberately misleading statement. It is misleading for a number of reasons.

Apart from the fact that the amounts listed on page 7a of their brief and the first three "contributions" on page 8a are amounts contributed to, not by, Railway Labor's Political League, the remainder of the lists on pages 8a-39a are of contributions not by any of the

petitioner unions (or any other unions), but are lists of contributions by Railway Labor's Political League and the Committee on Political Education of the AFL-CIO in 1956. They are almost exclusively contributions to political organizations, not to the candidates. But more important, the uncontradicted evidence is that such disbursements were made entirely from contributions voluntarily made to those organizations for such purposes, and that none of the money came from dues or fees paid to either of the petitioners. R. 86, 87-9, 91, 98, 106, 124-133. There was no evidence that any of the plainitffs were opposed to any of the candidates to whose campaigns such contributions were voluntarily made by other people.

The respondents are guilty of equally gross distortion when they say "the recipients of such largess" are selected by "the higher Union officials". There is nothing to show who selects the causes to which R.L.-P.L. and C.O.P.E. make contributions, nothing to show they are union officials and certainly nothing to show that they act as union officials in dispensing the voluntary contributions to R.L.P.L. and C.O.P.E., and most assuredly nothing to show that they are officials of the unions in this case (as the respondents probably meant this Court to believe). It should be noted that the only reference to the printed record made by respondents in purported support of this blatantly false paragraph contains a stipulation that none of the contributions was made by either of petitioners. R. 109. And as we showed in our main brief, of course there was no showing that any respondent was opposed to any of the candidates who may have benefited from any of those contributions.

In the last paragraph beginning on page 3 of their brief the respondents mention certain special editions of the newspaper Labor supporting *in past years* certain candidates for public office. Since none of respondents have paid any dues to the unions, it is clear that none of their dues was used to support that newspaper, ignoring the fact that there is no showing the respondents opposed any of those candidates. There is no evidence that the lodges to which respondents would pay dues if they became members subscribe to Labor. R. 188. (Parenthetically, their statement that each of the 36 special editions ran to "something less than a million copies", when checked against their record reference (R. 133), is sheer fabrication; as the record shows, the special editions, plus the regular edition, were in the aggregate "something less than a million copies.")

In the same paragraph they mention certain expenditures by the AFL-CIO for legislative and other purposes. They do not even contend that any such expenditures promoted causes opposed by respondents or opposed causes supported by respondents, or that, even if they did, respondents made that fact known, or that even if they made that fact known, their dues were used for such purposes. Obviously their dues were not used for such purposes, for they have not paid any dues.

The remainder of respondents' Statement of the Case contains numerous other misstatements. It is sufficient to point out that there is not a word anywhere to show that any of the respondents is opposed to any of the political or legislative activities referred to.

ARGUMENT

Some of respondents' arguments are of a curious nature.

They argue on page 7 that our argument that respondents never advised us of any cause supported by us to which they were opposed is unsound because we never asked for a bill of particulars. But we did better than get a bill of particulars. We asked the respondents, on the witness stand, to name any political candidates or causes or legislation supported by petitioners which they opposed and not one of them could name a single such candidate or cause or legislative item except that two or three of them stated that they were opposed to the enactment of section 2, Eleventh of the Railway Labor Act; but the enactment of that section necessarily preceded any union-shop compulsion on the respondents.

On pages 8 and 9 they argue that it is "thoroughly amazing" to find the petitioning unions arguing that respondents case must fail for their failure to inform the unions of any particular union political activity opposed by respondents because the unions have argued that there is no evidence in the record that they engage in political activity. Why this should be amazing is not apparent. We have said, first, that the respondents have not shown that petitioners engage in political activity, and we have further said, as a separate reason for their case being without substance, that they have not informed the union of any particular union activity to which they are opposed, as the *Street* case holds they must do to have a cause of action.

On page 10 they seem to argue that "it seems unnecessary to pursue the defendants [petitioners] into

the absurdities of their position on this subject" because by bringing this action and pursuing it they have made known to the unions the causes to which they object. This seems to espouse a doctrine of jurisprudence difficult to comprehend. With respect to respondents' having a cause of action because they brought this lawsuit, the argument seems to urge that one who does not have a cause of action against another acquires a cause of action by suing him. We doubt that there has ever been a more fantastic attempt to lift oneself by one's own bootstraps. And with respect to having "made known" the causes they oppose by pursuing this litigation, the only time respondents made known to the union their position with respect to any cause was when they testified at the trial, and at that time they were utterly unable, although asked, to specify a single cause espoused by petitioners and opposed by respondents since the union shop in the railroad industry. The extensive quotations on pages 10-13 of their brief shed not a single ray of light on what causes there may be that petitioners have supported since they have had a union shop and which respondents oppose.

The respondents are wrong also in saying, as they do on page 13 of their brief, that we assert "that each of the plaintiffs 'is to be regarded as a voluntary or acquiescing dues payer.'!" We assert, as is the fact, that not one of them is a dues payer at all. And we suggest further that the record as a whole shows that their interest in this lawsuit is to remain non-dues-payers; they have proven nothing more than their opposition to a union shop, and this Court has unmistakably held that a union shop is not unlawful.

Point II of the argument in respondents' brief consists of several unrelated components. It argues, in effect, that assuming the respondents have proven a cause of action, they should be relieved entirely of any obligations under the union shop unless the unions prove the precise amount of respondents' damages. This is a doctrine this Court rejected in the *Street* case. They rely upon hopelessly inapposite precedents. They point with pride to the fact that the trial court (over their objection) refused to sustain their case as a class action. They say it is apparent that in the *Street* case this Court was "casting about" for a remedy which happens to be just the remedy granted in this case in the trial court. This is so, they say in part, because the injunction granted by the trial court in this case does not enjoin the collection of all funds from the respondents. This is fully answered on page 22 of our main brief. It is difficult to understand how respondents can persist in arguing that the judgment below is not an injunction against enforcement of the union-shop agreement.

Respectfully submitted,

MILTON KRAMER,
LESTER P. SCHOENE

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.

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